

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 7-18-07
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-v-

VICTOR NAZARIO,

Defendant.
-----X

05 CR. 284 (DLC)

MEMORANDUM OPINION
AND ORDER

DENISE COTE, District Judge:

On August 9, 2006, defendant Victor Nazario ("Nazario") filed a motion to correct the records of the Bureau of Prisons and Department of Homeland Security, among other entities, to reflect that he is a United States citizen. On March 3, 2006, Nazario was sentenced principally to a term of imprisonment of sixty months following his plea of guilty to a federal narcotics charge. Nazario's application is denied.

Nazario was interviewed in Arizona on September 12, 2003 by Immigration and Naturalization Service ("INS"), and denied that he is a citizen of the United States. "Nazario" identified himself as Evangelista Quezada-Guzman. He stated that he had been born in the Dominican Republic, was a citizen of that country and entered Puerto Rico illegally in 1988. He explained that he had once used the name Victor Laureano Nazario and had been arrested on drug charges under that name. He also had in his possession a birth certificate, social security card, driver's license and identification card in the name of Juan Manuel Rivera Velez, an American citizen born in Puerto Rico. He

admitted that he had purchased the Rivera birth certificate and was trying to use the Rivera documents to get to New York.

In support of his 2006 motion, Nazario provided a birth certificate and social security card in the name of Victor Manuel Nazario, but no other evidence that they legitimately belong to him. In opposition to Nazario's motion, the Government presented the above-described information from the September 2003 INS interview. Nazario's only response to the Government's report about the INS interview is to request that the Government's submission be ignored as untimely.

Because Nazario had raised the issue of his true name and citizenship at his sentencing proceeding, the Court accepted this motion and will treat it as renewed application to correct this district's Pre-Sentence Report. The November 10, 2005 Pre-Sentence Report reported that the defendant's true name is Evangelista Quezada Guzman, that he was born in the Dominican Republic, and entered the United States through Arizona using the alias of Juan Manuel Rivera Velez, a United States citizen from Puerto Rico. It indicated that he was not deported upon discovery in Arizona because his fingerprints revealed that there was a New York State parole warrant for him under the name of Victor Nazario. The report recommended that Nazario be given a two level sentencing enhancement for obstruction of justice for providing false information about his identity to the Probation Department. Nazario had told the Probation Department that he was born in New York City and that his true name is Nazario.

With the obstruction adjustment, the report recommended a guidelines sentence of 87 months' imprisonment.

Prior to being sentenced, the defendant objected to the recommended enhancement and insisted that his true name was Nazario and that he is a United States citizen. Sentencing was adjourned to permit the United States Attorney's Office to obtain the defendant's immigration file. On March 3, 2006, the Government reported that it still did not have the file, was ready to proceed with sentencing, and was not going to ask for an obstruction enhancement. It was also determined that the offense level should be reduced by two levels due to an error in the calculation of drug quantity. That left an offense level of 23, with a Criminal History Category of III, and a range of 57 to 71 months. Because there was a five-year mandatory minimum term of imprisonment from the offense of conviction, the Court imposed a sentence principally of 60 months' imprisonment. Defense counsel requested that the Court direct the Pre-Sentence Report to reflect the Court's determination that Nazario is a citizen of the United States. The Court did not grant that request, but did grant the request that the report be changed to reflect that the defendant's true name is Victor Nazario.

As reflected above, the Government has now obtained the immigration file, and based on a review of that file it appears that the Probation Department was fully warranted in its recommendation that the obstruction of justice enhancement be imposed. Furthermore, the defendant may have received a lower

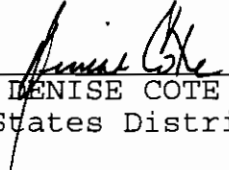
sentence than he should have because of his deception in connection with sentencing. There is certainly no basis for finding that he is a United States citizen or that any order should be entered by this Court correcting any government record in that regard.

Conclusion

The August 9, 2006 application by Victor Nazario is denied. The Clerk of Court shall provide a copy of this Opinion and Order to this district's Probation Department.

SO ORDERED:

Dated: New York, New York
July 18, 2007


DENISE COTE
United States District Judge

COPIES SENT TO:

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